

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE DISTRICT COUNCIL 9 PAINTING	)	
INDUSTRY INSURANCE AND ANNUITY FUNDS,	)	Index No. 07-CIV-6439 (WCC)
	)	
Plaintiffs,	)	AFFIDAVIT FOR JUDGMENT
	)	BY DEFAULT
	)	
-against-	)	
	)	
DAME CONTRACTING, INC.,	)	
	)	
Defendant.	)	
	)	

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WESTCHESTER )

Dana L. Henke, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and am associated with the firm Barnes Iaccarino, Virginia, Ambinder & Shepherd, PLLC as the attorneys of record for the Plaintiffs, Trustees of the District Council 9 Painting Industry Insurance and Annuity Funds (hereinafter referred to as the "Funds") in the above-entitled action. I am fully familiar with facts set forth herein, and I submit this Affidavit in support of plaintiff's entry of Default Judgment.

2. Plaintiffs Funds are jointly administered, Multi-employer, labor management employee benefit trust funds established and maintained pursuant to the terms of various collective bargaining agreements and the Labor Management Relations Act of 1947 ("Taft-Hartley Act"). Plaintiff Union is a labor organization, which represents in an industry affecting commerce.

3. Defendant, Dame Contracting, Inc. (hereinafter referred to as "Employer") is an Employer within the meaning of Section 3(5) and 515 of ERISA, 29 U.S.C. Section 1002(5) and 1145, and an Employer in an industry affecting commerce within the meaning of Section 301 of the Taft-Hartley Act, 29 U.S.C. Section 185.

4. This is an action to recover certain delinquent late charges contributions owed to the Funds and Union by the Employer pursuant to a Collective Bargaining Agreement (hereinafter referred to as the "C.B.A.") between the Union and the Employer.

5. The Employer as party to the C.B.A. is required to remit to the plaintiff benefit contributions and reports in a timely fashion and is liable for the additional amount of statutory damages, together with attorneys' fees, interest on the unpaid principal, costs and disbursements incurred in the action pursuant to the terms of the C.B.A. and in accordance with Section 502 of ERISA, 29 U.S.C. Section 1132.

6. Jurisdiction of the subject matter of this action is based on the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

7. This action was commenced on July 16, 2007 by the filing of a Summons and Complaint. The Summons and Complaint was served upon the Employer on July 25, 2007 via Secretary of State.

8. The Proof of Service was filed with the Clerk of this Honorable Court on August 2, 2007. Copies of the summons, complaint, and proof of service thereof are annexed hereto collectively as Exhibit "A".


9. Plaintiff is entitled to damages as follows:

(a) In the minimum sum of \$6,595.13 (which includes \$4,665.13 in unpaid late charges for the period July 4, 2006 through January 23, 2007, \$1,500.00 in attorneys' fees, court costs and disbursements in the amount of \$430.00 pursuant to the collective bargaining agreement and in accordance with Section 502 (g)(2)(D) of ERISA 29 U.S.C. 1132 (g)(2)(D)).

(b) For such other and further relief as the Court deems appropriate.

**WHEREFORE**, plaintiffs request the entry of Default and the entry of the annexed Judgment against defendant in the amount of \$6,595.13.

Dated: Elmsford, New York  
September 4, 2007

  
Dana L. Henke (DLH3025)  
Barnes, Iaccarino, Virginia,  
Ambinder & Shepherd, PLLC  
258 Saw Mill River Road  
Elmsford, New York 10523  
(914) 592-1515

Sworn to before me this  
4<sup>th</sup> day of September, 2007

  
Notary Public

CHRISTIE S. ROOS  
Notary Public, State of New York  
No. 01RO6014276  
Qualified in Westchester County  
Commission Expires October 5, 2010